SEJATI SDN BHD

v.

THE DIRECTOR OF FORESTRY & ORS

HIGH COURT SABAH & SARAWAK, SANDAKAN
IAN HC CHIN J
[ORIGINATING SUMMONS NO: S24-100-2001]
5 DECEMBER 2001

LAND LAW: *Alienation and incidents - Restriction in interest - Extraction of timber - Claim for refund of royalties paid for extraction of timber - Whether plaintiff's right to remove timber without paying royalties - Licence - Whether required to obtain licence for purpose of extracting - Whether s. 23 of the Forest Enactment 1968 (Sabah) ultra vires art. 8 of Federal Constitution - Forest Enactment 1968 (Sabah), ss. 24 and 41 - Forest Rules 1969 (Sabah), Form 11A - Land Ordinance, s. 23*

The plaintiff was the registered owner of a parcel of land the title to which contained various conditions relating to the cultivation of land. Clause 11 of the conditions permits the plaintiff to extract and remove timber from the land subject to payment of an extraction charge to the Sabah Government. The plaintiff had felled trees from the land, obtained a permit for removal of the timber and paid RM2,075,804.85 as timber royalties. Subsequently, the plaintiff claimed that the relevant state law under which the timber royalties were collected, that is, the Forest Enactment 1968 (Sabah) ("the Forest Enactment") does not apply to the plaintiff or that if applied would be *ultra vires* art. 8 of the Federal Constitution ("the constitution"). The plaintiff asserted that they have a right to remove the timber from the land without having to pay timber royalties, thus in the present proceedings they claimed for a refund. For the purpose the plaintiff claimed various declarations relating to laws governing land and forest matter.

The issues were: (1) whether the only law that governs the said matter is s. 23 of the Land Ordinance (Cap 68) (Sabah) ("Land Ordinance") as contended by the plaintiff; (2) whether the plaintiff was required to pay the royalties for the timber extracted; (3) whether plaintiff was required to apply for a licence; (4) whether a licence to take forest produce free of royalty in Form 11A of the Forest Rules 1969 (Sabah) ("the Forest Rules") should have been issued to them and (5) whether s. 23 of the Forest Enactment was *ultra vires* art. 8 of the Constitution.

Held:

[1] It was provided by s. 23 of the Forest Enactment that unless a person has the requisite permission, he cannot remove any forest produce from his own land. Clearly by those terms the plaintiff was required to apply for a license to remove timber from the land and to pay timber royalties. (pp 375 c-d & 376 g-h)

[1a] The granting of a licence for the removal of forest produce from alienated land was not covered by the Land Ordinance or its rules. By 1936, the Forest Ordinance had already existed, the precursor of the present Forest Enactment, to which the Land Ordinance, after it was revised in 1953, already made a reference. Thus, the omission of the matter of the license for forest produce from r. 3 of the Forest Rules was a clear indication that the matter of licenses for forest produce was not within the province of the Land Ordinance but under the jurisdiction of the Forest Enactment. Therefore, it was incorrect as contended by the plaintiff that the Land Ordinance and the Forest Enactment regulate the issuance of licenses for the removal of forest produce from the land. It was within the powers of the Director of Lands and Surveys to impose the condition that the licence is subject to "the provisions of any other law". The law that such activity as the removal of forest produce is governed by s. 23 of the Forest Enactment and hence its application. (pp 378 e-g & 379 a-b)

[2] In the present case, when the land was alienated to the plaintiff, it came with the trees. Therefore the plaintiff became owner of the trees and no question of royalty arose. Nevertheless, under s. 23 of the Land Ordinance, the title to the land only conveys "surface rights". The government had reserved its right to the forest produce when it is to be removed beyond the boundary of the land and the government in granting the licence to remove the same can impose conditions and such removal must comply with the laws governing forest produce. Therefore the underlying supposition to support the argument of the plaintiff which is that they own the trees because they had been granted the land was not correct. The right to the trees had been expressly reserved for the government but with a concession granted to the owner of the land to fell the trees for use within the land's boundary. (p 379 d-i)

[3] It is not an offence if the plaintiff cut the trees and let them rot on their land since that act does not require a licence. It is only an offence, under s. 23 of the Forest Enactment if the plaintiff after cutting the trees removed them beyond the boundaries of the land. A licence is required for this purpose under s. 24 of the Forest Enactment except for a native

of Sabah in certain cases. The exemption is stated in r. 9 of the Forest Rules 1969 and s. 41 of the Forest Enactment. If such forest produce is to be taken out of the district in which the native ordinarily resides, a free pass (and not a licence) must be obtained from the District Forest Officer for such removal under r. 8 of the Forest Rules. In the present case, the plaintiff is a limited company and not a native. Therefore they cannot claim for such exemption. (p 381 c-i)

[4] There is no guideline nor stipulation as to how the discretion to issue which particular licence is to be exercised. The law says that any of the three types of licences can be issued and the rest is left to the director to decide. Unless it can be established that the director is wrong in issuing the one and not the other, the court cannot say it was wrong. The plaintiff's argument was premised on the supposition that the timber belong to them, thus there was no need to pay royalty but as dealt with earlier, the timber only belongs to them as long as the timber remain on the land but not when they are removed out of the boundaries of the land. Hence, the court was unable to hold that the plaintiff should have been issued a Form 11A licence. (p 382 d-g)

[5] The Land Ordinance does not contain provision for the collection of timber royalties and the Forest Enactment does not distinguish between landowner and non-owners when dealing with the imposition or collection of timber royalties. When a person pays a premium, he can own the land and when he pays the timber royalties he can sell the timber – two entirely different subject matter which attracts different treatment. There was no question of discriminatory treatment of the same subject matter and therefore there was no infringement of the Constitution. (p 383 e-g)

[Plaintiff's claim dismissed with costs to the defendant.]

Case(s) referred to:
Desa Teck Guan Koko Sdn Bhd v. Sykt Hap Foh Hing [1994] 3 CLJ 172 HC ***(dist)***

Legislation referred to:
Federal Constitution, art. 8
Forest Enactment 1968 (Sabah), ss. 2, 23, 24, 41
Forest Rules 1969 (Sabah), rr. 3, 4, 8, 9, 9(1), 15, Forms I, IIA, IIB, sch III
Land Ordinance (Cap 68) (Sabah), ss. 23, 24, 25
Land Rules 1930 (Sabah), r. 3

For the plaintiff - Colin Lau; M/s Colin Lau & Co
For the defendants - Jurpin Wong Adama AGs' Chambers

Reported by Suhainah Wahiduddin

JUDGMENT

Ian HC Chin J:

The Claim

The plaintiff, Sejati Sdn Bhd sought to recover RM2,075,804.85 which they have paid the 3rd defendant through the 1st defendant, the Sabah director of forestry. For the purpose, the plaintiff claimed various declarations relating to the laws governing land and forest matter.

The Title

On 21 November 1978, the plaintiff became the registered owner (after acquiring it from a company) of a parcel of land measuring about 5,000 acres. The title to the land has various conditions relating to the cultivation of the land and, by cl. 6 of the conditions: "Transfer and sublease of this title is prohibited until such time as the said land has been brought fully into cultivation in accordance with the terms and conditions herein." Since there was a transfer of the title to the plaintiff in 1978, it can be assumed that the cultivation of the land in accordance with the conditions of the title was done. The land was supposed to be cultivated with tapioca or other "not less economic" crop which the director of Agriculture approves. So instead of tapioca, the land was, after the transfer, planted with cocoa trees, timber and rotan. Since cultivation would involve clearing the land hence cl. 11 of the conditions says:

> Permission is hereby expressly granted to extract and remove timber hereafter called "material" from the said land in accordance with Section 23 of the Land Ordinance subject to the terms and conditions herein, the provisions of any other law and the payment to the Government of the State of Sabah of an extraction charge of nil cents, for each cubic foot of material so removed.

In 1999, the plaintiff felled trees found on the land. As to what those trees were, this is how the plaintiff described them in an affidavit filed on their behalf, *viz*:

> After the said transfer, the Plaintiff Company fully cultivated and developed the said land by planting cocoa trees, timber and rotan. The Plaintiff Company, in the course of cultivating and developing the said land, took care of and ensure that the young timber trees then growing on the said land were not destroyed and instead nurtured and allowed them to grow for over 20 years when in 1999 the Plaintiff Company decided to fell them as they had already by then matured, for commercial purposes.

The first sentence conveys the impression that the plaintiff had planted trees after the land was transferred to them in 1978 while the second sentence reveals that the plaintiff had nurtured the young trees already growing (as opposed to those they have cultivated as mentioned in the first sentence). Therefore, we

are concerned with timber from trees that were not cultivated. It was in respect of these timber that the plaintiff felled in 1999, obtained the permit to remove the timber and paid the said sum as timber royalties which they are now claiming for a refund. The plaintiff claims a refund primarily on the basis that the relevant state law under which the timber royalties were collected, that is, the Forest Enactment 1968, does not apply to the plaintiff or that the Forest Enactment if applied to the plaintiff would be *ultra vires* art. 8 of the Constitution. The plaintiff asserted that they have a right to remove the timber from the land without having to pay timber royalties. By the time of this action the plaintiff had sold the land but a provision of the agreement allows the plaintiff to continue to extract timber from the land.

The Law

Unless you have the requisite permission you cannot remove any forest produce from your own land. This is provided under s. 23 of the Forest Enactment which says:

> 23(1) Unless expressly authorized by or under the provisions of this Enactment, any person who:
>
> (a) girdles, marks, lops, taps or injures by fire, or otherwise any forest produce on any State land; or
>
> (b) removes any forest produce found on any alienated land beyond the boundaries of that land,
>
> shall be guilty of an offence and on conviction shall be liable to a fine not exceeding fifty thousand ringgit or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.
>
> (2) Unless expressly authorized by or under the provisions of this Enactment, any person who cuts, collects, converts, fells or removes any forest produce on any State land shall be guilty of an offence and on conviction shall be punished with a fine not exceeding five hundred thousand ringgit and to imprisonment for a term which shall not be less that one year but shall not exceed twenty years
>
> (3) ...
>
> 24.(1) Subject to the provisions of this Enactment, the Director or any person authorized by him in that behalf may issue licences for the doing of all or any of the facts prohibited by sections 20 and 23 of this Enactment upon such conditions and subject to the payment of such fees or royalties (if any) as may be prescribed or as may be specified in such licence:
>
> Provided that where a licence relates to the doing of any act in Forest Reserve or on State land, it shall not be issued without the written approval of the Minister.

(2) A licence unless sooner revoked or cancelled shall be valid for such period as may be specified therein and may be renewed twice for a period not exceeding one year each by the Director ...

(3) ...

(4) ...

(5) ...

(6) ...

However, there is an exception to the requirement of a licence and this is found in r. 9(1) of the Forest Rules 1969 (Sabah) which reads:

9.(1) Notwithstanding the provisions of section 23, natives whose ancestors have been, and who themselves are dependent on shifting cultivation in Sabah for subsistence, may without licence fell, burn or clear for the purpose of shifting cultivation forest or secondary growth on any State land which is not the subject of a licence under section 24. Secondary growth for the purposes of this rule is defined as forest containing trees of not more than six years standing and not exceeding fifteen centimeters diameter at one hundred and forty centimetres from the ground, being of a kind that may readily be felled by means of implements for cutting of no greater efficiency or weight than an ordinary parang.

As for the meaning of "alienated land", it suffice for our purpose that it means the land. The term "forest produce" is defined by s. 2 of the Forest Enactment to mean (reproducing the relevant part only):

(a) the following when found in or brought from a Forest Reserve, State land or alienated land - timber, firewood, charcoal, getah, wood oil, bark, extracts of bark, copal, damar and atap;

Provided that in the case of alienated land this paragraph shall only apply to the produce of natural uncultivated trees or plants;

Clearly, by those terms of the Forest Enactment, the plaintiff was required to apply for a licence to remove timber from the land and to pay timber royalties. The plaintiff argued otherwise on various grounds which I will now proceed to deal with.

Is Timber A "Forest Produce?

The plaintiff says timber is not "forest produce" but only products like getah, wood oil, copal, damar and atap are. That goes against the very clear definition in s. 2 that it includes "timber". The only qualification in the proviso to s. 2 is that the timber must be from natural uncultivated trees. It is common ground that the timber and trees were as agreed by the parties:

> The trees felled were natural trees ie, not planted by the Plaintiff. However, when the land was transferred to the Plaintiff on or about 21.11.1978, the trees were young. The Plaintiff, in the course of cultivating and developing the said land, took care of and ensure that these young trees were not destroyed and instead nurtured and allowed them to grow for over 20 years when in 1999 the Plaintiff decided to fell them as they had already by then matured, for commercial purposes.

The plaintiff then argued that the trees cannot be regarded as "natural uncultivated trees" as the trees were preserved and nurtured to maturity by the plaintiff. This contention calls for a consideration of the meaning of that term "natural uncultivated trees". "Natural", according to Collins, mean, taking the relevant one, "1. of, existing in, or produced by nature:" Plainly then, it means the trees were not planted by human. But the term there also contains the word "uncultivated" and in order to appreciate its meaning and whether it adds to and alters in any way the meaning of "natural", one has to find what is meant by "cultivate". The said dictionary, defines "cultivate" as meaning:

> 1. to till and prepare (land or soil) for the growth of crops. 2. to plant, tend, harvest, or improve (plants) by labour and skill. 3. to break up (land or soil) with a cultivator or hoe. 4 ... 5 ... 6 ... .

The term "cultivate" connotes something requiring human intervention, such as to till the soil, to plant on it and then to tend to the plants that have been grown. Therefore, it does not detract from what the term meant to convey and that is that the trees must not have been planted by human as opposed to by nature. Therefore, the term "uncultivated" serves to further emphasise the all important requirement that the trees must not have been planted by human. In this case, the trees were not planted by humans even though they were looked after by them. Therefore, the timber in this case were from "natural uncultivated trees".

Which Law To Govern - The Forest Enactment Or The Land Ordinance?

The plaintiff contended that the only law that governs the matter is s. 23 of the Land Ordinance (Cap 68) (Sabah) which reads:

> 23. In the absence of any express provision to the contrary, every document of title issued under the provisions of this Ordinance shall be deemed to vest in the holder thereof a surface right only in the land granted, and no right be conveyed thereby to remove beyond the boundaries of the said land, without licence, any timber or other forest produce or any earth, gravel, stones, coral, shell guano, sand, loam or clay, or any bricks, lime, cement or other commodities manufactured from the materials aforesaid.

The term "forest produce" was defined to "have the same meaning that as that assigned to it under the Forest Ordinance 1968". As for the licence for the

removal of the timber beyond the boundaries of the land, the plaintiff argued that it is governed by r. 3 of the Land Rules but r. 3 talks only of: "licences for the purposes of ss. 24 and 25" and those sections of Land Ordinance talk only of minerals, birds' nests and guano and not of timber. This is clear from the terms of those sections which are reproduced here:

> 24.(1) All coal, minerals, precious stones and mineral oils are, and are deemed always to have been, reserved to the Government, together with the right to entered upon any lands and to search for, win, carry away and dispose of such articles in, on or under the same, and to resume such portions of land as may be necessary for examining or working any mines or for the removal of the products thereof, upon payment of compensation to the owner for damage to such lands or buildings thereon.
>
> (2) ... (3) ... (4) ...
>
> 25. The Government reserves all edible birds' nests and guano ad also the right at all times to enter upon any land and to take, or authorise others to take, such edible birds' nests and guano on payment of compensation for actual damage done to the property of the owner.

Therefore, it is not correct that the matter of the granting of licence for the removal of the timber from the land is governed by both the Land Ordinance (and the rules made thereunder) and by the Forest Enactment. The matter of the granting of a licence for the removal of forest produce from alienated land is not covered by the Land Ordinance or its rules. By 1936, there exists the Forest Ordinance, the precursor of the present Forest Enactment, to which, as mentioned earlier, the Land Ordinance, after it was revised in 1953, already made reference. Thus, the omission of the matter of the licence for forest produce from r. 3 is a clear indication that the matter of licences for forest produce is not within the province of the Land Ordinance but under the jurisdiction of the Forest Enactment. Therefore, it cannot be correct, as contended by the plaintiff, that the Land Ordinance and the Forest Enactment regulate the issuance of licences for the removal of forest produce from the land.

Therefore, the argument that plaintiff was already granted a licence to remove the forest produce in the form of cl. 11, *supra*, without having to pay any timber royalties had ousted the application of the application of the Forest Enactment cannot succeed not only because the Land Ordinance does not provide for the issue of any licence for the removal of forest produce but also because the provision for the issuance of a licence or permit to remove forest produce can only be found in s. 24 of the Forest Enactment. Even assuming

that the matter of the removal of forest produce is within the province of the Land Ordinance and that r. 3 provides for the licence to be issued, and cl. 11 cannot be said to be the licence, it is still within the powers of the Director of Lands and Surveys to impose the condition it did, which is that the licence is subject to "the provisions of any other law". The law that such activity as the removal of forest produce is governed by s. 23 of the Forest Enactment and hence its application.

Is Royalty Payable?

The plaintiff then argued that even if s. 23 applies, only a transit pass under r. 15 of the Forest Rules 1969 (Sabah) is required and no royalties are payable because the trees on the land belong to the plaintiff as opposed to trees found on State Land or Forests Reserve which would belong to the government. Royalty is not payable because the term royalty presupposes that something belongs to someone else for which payment is made to use that something but in the present case the trees already belonged to the plaintiff. The gist of the argument is that royalty is paid to someone for using his patent or taking his minerals. Therefore, it presupposes that ownership of the thing lies with the person to whom royalty has to be paid. In the present case, when the land was alienated to the plaintiff, the tress were also alienated to the plaintiff therefore the plaintiff became owner of the trees and no question of royalty can arise. First question to be answered is this – what has been conveyed by the government or acquired by the owner when there is an alienation of land within the meaning of the Land Ordinance? The title to the land conveys only "surface rights" and this is provided in s. 23 of the Land Ordinance which reads:

> 23. In the absence of any express provision to the contrary, every document of the title issued under the provisions of this Ordinance shall be deemed to vest in the holder thereof a surface right only in the land granted, and no right shall be conveyed thereby to remove beyond the boundaries of the said land, without licence, any timber or other forest produce or any earth, gravel, stones, coral, shell guano, sand, loam or clay, or any bricks, lime, cement or other commodities manufactured from the materials aforesaid.

So, by that provision it is clear that the government had reserved its right to the forest produce when it is to be removed beyond the boundary of the land and the government in granting the licence to remove the same can impose conditions and such removal must comply with the laws governing forest produce. Therefore, the underlying supposition to support the argument of the plaintiff which is that they own the trees because they had been granted the land, is not correct. The right to the trees had been expressly reserved for the government but with a concession granted to the owner of the land to fell the trees for use within the boundary of the land.

Form 11A Licence (With No Royalty Payment) Should Have Been Issued

The plaintiff had also argued that royalty is not payable because a Form IIA should have been issued to them. Under r. 3 of the Forest Rules 1969 (Sabah), licences for the purposes of s. 24 is to be in Form 1, Form IIA or Form IIB as set out in sch. III of the Forest Rules. The plaintiff themselves applied for a Form I licence by their letter dated 24 March 1999 and was issued the same. The plaintiffs' attorney accepted the terms and conditions of the licence including the payment of royalty. The plaintiff willingly paid a total sum of RM2,075,804.85 to the Forestry Department as timber royalty. No issue is taken on this point and so it does not matter. Now the plaintiff say they should have been issued a Form IIA licence which is in the following form:

[Sch III, Form IIA]
70

G.N.S. 17 OF 1969

FORM IIA
FOREST RULES, 1969
(Rule 3)

LICENCE TO TAKE FOREST PRODUCE ROYALTY
(LESEN MENGAMBIL KELUARAN HUTAN BEBAS DARI ROYALTI)

Under the Forest Enactment, 1968 and Forest Rules 1969

Di bawah Enakmen Hutan 1968 dan Kaedah-Kaedah Hutan 1969

Monthly Licence to take ...
Lesen bulanan untuk mengambil

This Licence authorises ...
Lesen ini membenarkan

Of ...
beralamat di
to cut, collect and remove forest produce
untuk memotong, mengambil dan memindah keluaran hutan

of the following description ...
seperti yang diperihalkan berikut:

from ... in the District of ...
dari dalam daerah

during the calendar month of ... year ... only
dalam bulan tahun sahaja

Signed ... (Authorised Officer)
Tandatangan (Pegawai Berkuasa)

Office ... Name or Stamp
Jabatan Nama atau Cap

Date ...
tarikh

(Rules 5(3), 11, 15 and 16(3) to be printed on the back)

If such a licence, *supra*, had been issued the plaintiff would not have to pay any royalty. But which licence, Form I, IIA or IIB, is to be issued? The Forest Enactment and Forest Rules will now have to be perused to see if there is any provision regulating the type of licence to be issued. It ought first to be appreciated that it is not an offence if the plaintiff cut the trees and let them rot on their land since that act does not require a licence. It is only an offence, under s. 23 of the Forest Enactment 1968 (Sabah) if the plaintiff after cutting the trees removed them beyond the boundaries of the land. A licence is required for this purpose under s. 24 except for a native of Sabah in certain cases. One such exemption is stated in r. 9 which I have earlier referred to. Another instance would be the rights of native to cut and remove forest produce provided for under s. 41 which says:

> 41. Subject to any provisions of the rules prohibiting or regulating the cutting or removal of any specified form of forest produce or prohibiting or regulating the cutting or removal of all or any forest produce in any specified locality, nothing in this Enactment shall be deemed to prohibit the cutting and removal from State land which is not for the time being in the lawful occupation of some person or, with the permission of the owner thereof, from alienated land, by any native of any timber, atap or other forest produce which may be necessary:
>
> (a) for the construction or repair of a dwelling-house for the abode of himself and his family;
>
> (b) for the construction of fences and temporary huts on any land lawfully occupied by him;
>
> (c) for the construction or repair of native boats;
>
> (d) for the upkeep of his fishing stakes and landing places; for fire-wood to be consumed for his domestice purposes; or
>
> (e) for the construction and upkeep of clinics, schools, community halls, places of worship, bridges and any work for the common benefit of the native inhabitants of his kampung.

Those instances serve to illustrate that no royalty would be payable but then none of the licences is required. If such forest produce is to be taken out of the district in which the native ordinarily resides, a free pass (and not a licence) must be obtained from the District Forest Officer for such removal under r. 8. In the present case, the plaintiff is a limited company and not a native. Therefore, they can claim no such exemption.

There are restrictions regarding the issuance of licences under s. 24. Where the cutting of trees is to take place in a Forest Reserve or on State Land, the licence cannot be issued unless the Minister concerned had approved it. In other cases, the Director of Forests can do so. No licence can be issued for doing any such act on alienated land unless the licence is applied for the owner of the land or with its permission. There are other conditions to be imposed under the law for the issuance of the licence but they are not relevant for the present case. The manner and the type of licence is prescribed by r. 3 of the Forest Rules which I have earlier referred to. Apart from a Form IIA licence which I have earlier reproduced, the other two types of licences are Form I and Form IIB which contain express provisions for the payment of royalties. Because the Director of Forest is the person to issue the licence, it becomes relevant to ask how the Director of Forest decides which type of licence is to be issued. Some of the restrictions regarding the exercise of such power has already been mentioned and can be found in the Forest Enactment. The Forest Rules, Rule 4, also contains provision relating to the issue of a licence which is that before a Form I licence can be issued there must be a deposit of money or a guarantee to secure the observation of the conditions of a licence, such as the payment of royalty. Other than those provisions which I have referred to there is no guideline nor stipulation as to how the discretion to issue which particular licence is to be exercised, at least no evidence is adduced. The law says that any of the three types of licences can be issued and the rest is left to the director to decide which licence is to be issued. Unless it can be established that the director is wrong in issuing the one and not the other, the court cannot say that it is wrong. The plaintiff's argument is premised on the supposition that the timber belong to them and therefore there is no need to pay royalty but as I have said earlier, the timber only belongs to them as long as the timber remain on the land but not when they are removed out of the boundaries of the land. Therefore, I am, for the reasons I have said, unable to say that the plaintiff should have been issued a Form IIA licence. In so far as *Desa Teck Guan Koko Sdn Bhd v. Sykt Hap Foh Hing* [1994] 3 CLJ 172 is concerned, that case is not relevant because it did not deal with the question of whether royalty is payable for timber extracted from alienated land and removed outside the boundaries of the alienated land. This takes me to the final issue which concerns the constitution.

Is s. 23 *ultra vires* Article 8 Of The Constitution

The argument of the plaintiff with regard to this issue is in the following words:

> 5.5.1 We further respectfully submit that even if (which is not conceded) Section 23 of the Forest Enactment applies and a licence is required to remove timber beyond the boundaries of the alienated land and royalties are to be paid, then that provisions requiring a licence to

be issued and royalties to be paid in respect of timber from alienated land, are *ultra vires* Article 8 of the Federal Constitution ... in that they discriminate land owners of alienated lands as compared to licensees of timber licences who are not land owners.

5.5.2 As state above, in such situation, a land owner of an alienated land would have to obtain a licence under Section 23 of the Land Ordinance as well as a licence under Section 23 of the Forest Enactment 1968. In this circumstance, he may have to pay double royalties. Whilst a licensee of a timber licence of an area belonging to the Government ie, from State land or Forest Reserve, needs to only obtain a licence under Section 23 of the Forest Enactment 1968 and pay a single royalty. In this way, a land owner who intends to remove timber from his alienated land (for which he has paid a premium as well as to pay annual rent and also by the Land Ordinance given the rights to the trees growing thereon) is being discriminated when compared with a licensee who removes timber not from his alienated land but from State land and Forest Reserve which actually belong to the people.

5.5.3 In the circumstances, the requirement of a licence under Section 23 of the Forest Enactment and the imposition of royalties for timber removed from the boundaries of an alienated land and in particular the said land belonging to the Plaintiff at that time, are *ultra vires* Article 8 of the Federal Constitution ... .

Again the underlying supposition to premise that argument is wrong. It is wrong to say that you have to apply for a licence to extract timber under s. 23 of the Land Ordinance because the Land Ordiance does not deal with such licence and none can be issued under the Land Ordinance, a matter which I have earlier dealt with. Neither does the Land Ordinance contain provision for the collection of timber royalties. Furthermore, the Forest Enactment does not distinguish between landowner and non-owners when dealing with the imposition or collection of timber royalties. When you pay a premium you get to own the land and when you pay the timber royalties you get to sell the timber – two entirely different subject-matter which attracts different treatment. There is no question of discriminatory treatment of the same subject-matter and therefore there is no infringement of the Constitution.

Conclusions

In the premises, the originating summons dated 27 November 2001 is dismissed with costs to the defendants.